

105TH CONGRESS
1ST SESSION

S. 1554

To provide for relief from excessive punitive damage awards in cases involving primarily financial loss by establishing rules for proportionality between the amount of punitive damages and the amount of economic loss.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, 1997

Mr. HATCH (for himself and Mr. LIEBERMAN) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for relief from excessive punitive damage awards in cases involving primarily financial loss by establishing rules for proportionality between the amount of punitive damages and the amount of economic loss.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness in Punitive
5 Damage Awards Act”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

1 (1) punitive damage awards in jury verdicts in
2 financial injury cases are a serious and growing
3 problem, and according to a Rand Institute for Civil
4 Justice study in 1997 of punitive damage verdicts
5 from calendar years 1985 through 1994 in States
6 that represent 25 percent of the United States popu-
7 lation—

8 (A) nearly 50 percent of all punitive dam-
9 age awards are made in financial injury cases
10 (those in which the plaintiff is alleging a finan-
11 cial injury only and is not alleging injuries to
12 either person or property);

13 (B) punitive damages are awarded in 1 in
14 every 7 financial injury verdicts overall and 1 in
15 every 5 financial injury cases in the State of
16 California;

17 (C) between calendar years 1985 through
18 1989 and calendar years 1990 through 1994,
19 the average punitive damage verdict in financial
20 injury cases increased from \$3,400,000 to
21 \$7,600,000;

22 (D) between calendar years 1985 through
23 1989 and calendar years 1990 through 1994,
24 the award of such damages at the 90th percent-
25 ile increased from \$3,900,000 to \$12,100,000;

1 (E) between calendar years 1985 through
2 1989 and calendar years 1990 through 1994,
3 the total amount of punitive damages awarded
4 increased from \$1,200,000,000 to
5 \$2,300,000,000, for a 10-year total of
6 \$3,500,000,000;

7 (F) punitive damages represent a very
8 large percentage of total damages awarded in
9 all financial injury verdicts, increasing from 44
10 percent to 59 percent during the period ana-
11 lyzed; and

12 (G) in the State of Alabama, punitive dam-
13 ages represent 82 percent of all damages
14 awarded in financial injury cases;

15 (2)(A) punitive damage verdicts are only the tip
16 of the iceberg because only a small percentage of all
17 complaints filed (1.6 percent according to a Depart-
18 ment of Justice study in 1995) result in a jury ver-
19 dict; and

20 (B) the Rand Institute of Civil Justice calls the
21 impact of these verdicts on settlements the “shadow
22 effect” of punitive damages;

23 (3) excessive, unpredictable, and often arbitrary
24 punitive damage awards have a direct and undesir-
25 able effect on interstate commerce by increasing the

1 cost and decreasing the availability of goods and
2 services;

3 (4) as a result of excessive, unpredictable, and
4 often arbitrary punitive damage awards, consumers
5 have been adversely affected through the withdrawal
6 of products, producers, services, and service provid-
7 ers from the marketplace, and from excessive liabil-
8 ity costs passed on to consumers through higher
9 prices;

10 (5) excessive, unpredictable, and often arbitrary
11 punitive damage awards jeopardize the financial
12 well-being of many individuals and companies, par-
13 ticularly the Nation's small businesses, and ad-
14 versely affect government and taxpayers;

15 (6) individual State legislatures can create only
16 a partial remedy to address these problems because
17 each State lacks the power to control the imposition
18 of punitive damages in other States;

19 (7) it is the constitutional role of the national
20 Government to remove barriers to interstate com-
21 merce and to protect due process rights;

22 (8) there is a need to restore rationality, cer-
23 tainty, and fairness to the award of punitive dam-
24 ages in order to protect against excessive, arbitrary,
25 and uncertain awards;

1 (9) establishing a rule of proportionality, in
2 cases that primarily involve financial injury, between
3 the amount of punitive damages awarded and the
4 amount of compensatory damages, as 15 States have
5 established, would—

6 (A) be fair to both plaintiffs and defend-
7 ants; and

8 (B) address the constitutional objection of
9 the United States Supreme Court in *BMW of*
10 *North America v. Gore* 116 S. Ct. 1589 (1996)
11 to punitive damages that are grossly excessive
12 in relation to the harm suffered; and

13 (10) permitting a maximum for each claimant
14 recovery for punitive damages of the greater of 3
15 times the amount of economic loss or \$250,000 is a
16 balanced solution that would reduce grossly excessive
17 punitive damage awards by as much as 40 percent,
18 according to the Rand Institute for Civil Justice.

19 (b) PURPOSES.—Based upon the powers contained in
20 Article I, section 8, clause 3 and section 5 of the 14th
21 amendment of the United States Constitution, the pur-
22 poses of this Act are to—

23 (1) promote the free flow of goods and services
24 and to lessen burdens on interstate commerce; and

1 (2) uphold constitutionally protected due proc-
2 ess rights by placing reasonable limits on damages
3 over and above the actual damages suffered by a
4 claimant.

5 **SEC. 3. DEFINITIONS.**

6 For purposes of this Act, the term—

7 (1) “act of terrorism” means any activity
8 that—

9 (A)(i) is a violation of the criminal laws of
10 the United States or any State; or

11 (ii) would be a criminal violation if com-
12 mitted within the jurisdiction of the United
13 States or any State; and

14 (B) appears to be intended to intimidate or
15 coerce a civilian population, to influence the
16 policy of a government by intimidation or coer-
17 cion, or to affect the conduct of a government
18 by assassination or kidnaping;

19 (2) “claimant”—

20 (A) means any person who brings a civil
21 action that is subject to this Act and any per-
22 son on whose behalf such an action is brought;
23 and

24 (B) includes—

1 (i) a claimant's decedent if such ac-
2 tion is brought through or on behalf of an
3 estate; and

4 (ii) a claimant's legal guardian if such
5 action is brought through or on behalf of
6 a minor or incompetent;

7 (3) "economic loss" means objectively verifiable
8 monetary losses including medical expenses, loss of
9 earnings, burial costs, loss of use of property, costs
10 of repair or replacement, costs of obtaining sub-
11 stitute domestic services, loss of employment, and
12 loss of business or employment opportunities, to the
13 extent such recovery is allowed under applicable
14 Federal or State law;

15 (4) "harm" means any legally cognizable wrong
16 or injury for which punitive damages may be im-
17 posed;

18 (5) "interstate commerce" means commerce
19 among the several States or with foreign nations, or
20 in any territory of the United States or in the Dis-
21 trict of Columbia, or between any such territory and
22 another, or between any such territory and any
23 State or foreign nation, or between the District of
24 Columbia and any State or territory or foreign na-
25 tion;

1 (6) “person” means any individual, corporation,
2 company, association, firm, partnership, society,
3 joint stock company, or any other entity (including
4 any governmental entity);

5 (7) “punitive damages” means damage awarded
6 against any person to punish or deter such person,
7 or others, from engaging in similar behavior in the
8 future; and

9 (8) “qualified charity” means any organization
10 exempt from filing information returns pursuant to
11 section 6033(a) of the Internal Revenue Code of
12 1986 as that exemption exists on the effective date
13 of this Act.

14 **SEC. 4. APPLICABILITY.**

15 (a) GENERAL RULE.—

16 (1) CIVIL ACTIONS COVERED.—Except as pro-
17 vided in subsection (b), this Act applies to any civil
18 action brought in any Federal or State court where
19 such action affects interstate commerce, charitable
20 or religious activities, or implicates rights or inter-
21 ests that may be protected by Congress under sec-
22 tion 5 of the 14th amendment of the United States
23 Constitution and where the claimant seeks to recover
24 punitive damages under any theory for harm that
25 did not result in death, serious and permanent phys-

1 ical scarring or disfigurement, loss of a limb or
 2 organ, or serious and permanent physical impair-
 3 ment of an important bodily function. Punitive dam-
 4 ages may, to the extent permitted by applicable
 5 State law, be awarded against a person in such a
 6 case only if the claimant establishes that the harm
 7 that is the subject of the action was proximately
 8 caused by such person. Notwithstanding any other
 9 provision of this Act, punitive damages may, to the
 10 extent permitted by applicable State law, be awarded
 11 against a qualified charity only if the claimant estab-
 12 lished by clear and convincing evidence that the
 13 harm that is the subject of the action was proxi-
 14 mately caused by an intentionally tortious act of
 15 such qualified charity.

16 (2) QUESTION OF LAW.—What constitutes
 17 death, serious and permanent physical scarring or
 18 disfigurement, loss of a limb or organ, or serious
 19 and permanent physical impairment of an important
 20 bodily function shall be a question of law for the
 21 court.

22 (b) EXCEPTIONS.—

23 (1) IN GENERAL.—The provisions of this Act
 24 shall not apply to any person in a civil action de-
 25 scribed in subsection (a)(1) if the misconduct for

1 which punitive damages are awarded against that
2 person—

3 (A) constitutes a crime of violence (as that
4 term is defined in section 16 of title 18, United
5 States Code) for which the defendant has been
6 convicted in any court;

7 (B) constitutes an act of terrorism for
8 which the defendant has been convicted in any
9 court;

10 (C) constitutes a hate crime (as that term
11 is used in the Hate Crime Statistics Act, Public
12 Law 101–275; 104 Stat. 140; 28 U.S.C. 534
13 note) for which the defendant has been con-
14 victed in any court;

15 (D) occurred at a time when the defendant
16 was under the influence (as determined pursu-
17 ant to applicable State law) of intoxicating alco-
18 hol or any drug that may not lawfully be sold
19 without a prescription and had been taken by
20 the defendant other than in accordance with the
21 terms of a lawful prescription; or

22 (E) constitutes a felony sexual offense, as
23 defined by applicable Federal or State law, for
24 which the defendant has been convicted in any
25 court.

1 (2) QUESTION OF LAW.—The applicability of
2 this subsection shall be a question of law for deter-
3 mination by the court. The liability of any other per-
4 son in such an action shall be determined in accord-
5 ance with this Act.

6 **SEC. 5. PROPORTIONAL AWARDS.**

7 (a) AMOUNT.—

8 (1) IN GENERAL.—The amount of punitive
9 damages that may be awarded to a claimant in any
10 civil action that is subject to this Act shall not ex-
11 ceed the greater of—

12 (A) 3 times the amount awarded to the
13 claimant for economic loss; or

14 (B) \$250,000.

15 (2) SPECIAL RULE.—

16 (A) IN GENERAL.—Notwithstanding para-
17 graph (1), in any civil action that is subject to
18 this Act against an individual whose net worth
19 does not exceed \$500,000 or against an owner
20 of an unincorporated business, or any partner-
21 ship, corporation, association, unit of local gov-
22 ernment, or organization that has fewer than
23 25 full-time employees, the amount of punitive
24 damages shall not exceed the lesser of—

1 (i) 3 times the amount awarded to the
2 claimant for economic loss; or

3 (ii) \$250,000.

4 (B) APPLICABILITY.—For purposes of de-
5 termining the applicability of this paragraph to
6 a corporation, the number of employees of a
7 subsidiary of a wholly owned corporation shall
8 include all employees of a parent corporation or
9 any subsidiary of that parent corporation.

10 (b) APPLICATION OF LIMITATIONS BY THE COURT.—

11 The limitations in subsection (a) shall be applied by the
12 court and shall not be disclosed to the jury.

13 **SEC. 6. PREEMPTION.**

14 Nothing in this Act shall be construed to—

15 (1) create a cause of action for punitive dam-
16 ages;

17 (2) supersede or alter any Federal law;

18 (3) preempt or supersede any Federal or State
19 law to the extent such law would further limit the
20 award of punitive damages; or

21 (4) modify or reduce the ability of courts to
22 order remittitur.

1 **SEC. 7. FEDERAL CAUSE OF ACTION PRECLUDED.**

2 The district courts of the United States shall not
3 have jurisdiction pursuant to this Act based on section
4 1331 or 1337 of title 28, United States Code.

5 **SEC. 8. EFFECTIVE DATE.**

6 This Act applies to any civil action described in sec-
7 tion 4 that is commenced on or after the date of enactment
8 of this Act, without regard to whether the harm that is
9 the subject of the action or the conduct that caused the
10 harm occurred before such date of enactment.

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